

Dear Mr. Tom Perez
Assistant Attorney General
Civil Rights Division

April 23, 2012

Mr. Kappelhoff, Chief
Civil Rights Division
US Department of Justice

Dear Mr. Perez and Mr. Kappelhoff,

I am very disappointed but not entirely surprised about your perfunctory “investigation” and conclusions expressed in Mr. Perez’ letter of April 19, 2012. Here is my response:

In 2006, within materials I requested from the Sterling Memorial Library at Yale University, I discovered proof of the militaristic order to “fire” upon unarmed Kent State students in 1970 in the digital CD version of the original analog recording made by Terry Strubbe. I announced my discovery which was widely reported on May 1, 2007.

The Cleveland Plain Dealer newspaper commissioned a professional audio analysis by experts Stuart Allen and Tom Owen in April, 2010, and reported in early May, 2010, their verification of the command to “fire” preceding the deadly Kent State gunfire.

On May 11, 2010, I presented this Yale-digitized CD recording of the Strubbe tape to the US Department of Justice office of US Attorney Steven Dettelbach in Cleveland. I requested further analysis of this evidence by the US Justice Department.

In October, 2010, the Cleveland Plain Dealer further reported new analysis by expert Stuart Allen indicating the possibility of four .38 caliber gunshots preceding the deadly barrage of M1 rifle fire at Kent State in 1970.

On November 2, 2010, I met Mr. Perez in the Cleveland office of Mr. Dettelbach and presented details and photographs relevant to the command to “fire” as well as the suspicious role of undercover FBI informant Terry Norman.

At that meeting I informed Mr. Perez our goal is not prosecution, punishment or retribution. I asked for a new investigation of the digital, forensic recorded evidence for the purpose of healing and reconciliation in a manner similar to the recent Saville Inquiry, a British resolution of the 1972 Bloody Sunday Massacre in Northern Ireland including a government admission of the truth, a semblance of justice by absolving the victims and placing the historical burden upon the killers for an intentional slaughter of innocent Irish civilians including reparations to compensate the families of the victims. I upheld the terms of this British government solution as a model for our American government to at last resolve the ongoing Kent State tragedy controversy.

At that meeting, Mr. Perez stated his doubt about further prosecution of the 1970 Ohio guardsmen due to statutes of limitations and double jeopardy and I agreed. Prosecution was and

remains a non-issue. So why do you curiously raise this red-herring prosecution issue now throughout your April 19 letter, Mr. Perez?

Next, Mr. Perez refers to the investigation of the Strubbe tape by the FBI's FAVIAU. You refer to the 1974 report issued by Bolt, Beranek & Newman (BBN) and wrongly state this company made an entire digital version of the Strubbe recording for their report. That is incorrect. In fact, an expert witness from BBN named Scott Robinson testified in Cleveland's Federal Court in our 1975 civil lawsuit trial, according to the court transcript:

"...The firm was retained by the [US] Justice Department..in January of 1974...we received a recording known as the Strubbe tape...a young man named Terry Strubbe had made the recording during the shootings...a great deal of work was done using a large digital computer. The information on the tape, during--that is, the shooting sequence, not, of course, the entire tape, was converted into the form called digital..."

So, BBN only digitized the approximately 13 seconds of Ohio National Guard gunfire and NOT the time preceding that deadly gunfire when the command was shouted.

Further, since the order to "fire" has been verified by experts Stuart Allen and Tom Owen, why did your office not interview these and other independent audio experts? Why do you only rely upon your own in-house analysis especially when an undercover FBI operative, Terry Norman, is now widely suspicious of illegal activities at Kent State in 1970? Only an independent analysis and investigation is credible, especially now.

Why was the original Strubbe tape destroyed? Why did you interview Terry Strubbe in 2011 but make no reference to any interview of Terry Norman? Have you interviewed Mr. Norman in recent years? If not, why? Are you concerned Mr. Norman may reveal aspects of unlawful FBI actions?

As I stated to you in November of 2010, Mr. Perez, we are requesting your department's honest investigation but we remain dubious while basically asking the modern Justice Department to investigate potential criminal actions conducted by an FBI operative in 1970. Then, as now, the FBI is a branch of the Justice Department, so your in-house investigation is possibly tainted by bias and an attempt to protect your own 1970 FBI operative, Mr. Terry Norman.

You are further incorrect regarding eyewitness reports of gunfire preceding the deadly barrage at 12:24pm on May 4, 1970. Several witnesses, including students, a KSU faculty member and at least one guardsman, claimed an Ohio National Guard officer fired a .45 caliber pistol on the practice field perhaps 5 or 10 minutes before the massacre.

And you are also wrong to conclude only Ohio National Guard ammunition casings were found on the ground at the scene of the crime in 1970. Your own FBI agents marked ammunition casings found including many turned in by KSU students. Some of these were introduced as evidence during 1975 in Federal civil court and were later placed at Yale University still inside marked FBI folders and plastic cases, including two .38 caliber ammunition casings I found and photographed at the Yale archive in 2006.

See: http://drs.library.yale.edu:8083/HLTransformer/HLTransServlet?stylename=yul.ead2002.xhtml.xsl&pid=mssa.ms.1800&query=whiting&clear-stylesheet-cache=yes&hlon=yes&big=&adv=&filter=&hitPageStart=226&sortFields=&view=c01_1#ref15
Guide to the ACLU of Ohio Kent State Project Records MS 1800

Series I. Legal Documents, 1970-1980

Box 52, Exhibits and evidence, *includes spent shell casings*, 5 folders

Only undercover FBI operative Terry Norman carried a .38 caliber weapon at Kent State on May 4, 1970, by his own admission, in his shoulder holster. Considering the fact non-military .38 caliber ammunition casings were found on the ground at Kent in 1970, are you unaware of this fact and resultant suspicion regarding possible gunfire by Terry Norman? Or are you simply refusing to evaluate evidence implicating an FBI operative?

Finally, on January 18, 2012, I received a phone call from Mr. Mark Kappelhoff, Chief, Civil Rights Division, US Department of Justice. He informed me his office finally turned this investigation over to the FBI during that week. I had great hopes after my cordial conversation with Mr. Kappelhoff at that time. Was it only a three-month investigation? Now, my hopes are dashed after receiving Mr. Perez' disappointing letter of April 19.

As chairperson of the Barberton Democratic Party since 1992 here in Ohio, I still support President Obama as a great President but I am deeply disappointed his Justice Department has failed to perform a serious, independent investigation of significant evidence proving an order to fire upon unarmed Kent State students as well as the curious role of a 1970 undercover FBI operative named Terry Norman.

So, considering the fact you are incorrect about the failure of BBN to digitize the recorded moments preceding the deadly Kent State gunfire as well as the existence of non-military .38 caliber ammunition casings, your failure to interview experts Stuart Allen and Tom Owen, and the inevitable suspicions regarding your in-house investigation, I request your further independent investigation utilizing more objective analysis of this crucial digital, forensic evidence in the Strubbe recording as well as the role of Terry Norman in 1970.

If you do not agree to further independent professional sound-expert analysis of the digital Strubbe recording, we will proceed with our own further verifications of the command to "fire". And, if our Federal and State governments do not provide truth, justice, healing and reconciliation, you will be responsible for motivating our further actions in and out of courts, on the local, state, national and international levels.

Again, I urge your implementation of truth and reconciliation as similarly realized by the Saville Inquiry regarding the 1972 Bloody Sunday massacre and promoted by the Conservative government in 2010 in Great Britain which included an apology.

I await your prompt reply, hopefully sooner than the nearly two years since our 2010 request for your investigation based upon this crucial forensic sound evidence you now attempt to ignore.

Sincerely,

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